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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD**

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-
governmental organization in general consultative status

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

Implementing article 2 of the ICCPR to ensure effective remedies for human rights violations in Asia

1. Failure to ensure effective remedies for violations of human rights is itself a basic violation of rights guaranteed under the International Covenant on Civil and Political Rights (ICCPR). Most neglected in this Covenant is article 2. In fact no agency or mechanism has consistently monitored the implementation of article 2. Nor is there a specific item on the agenda of the Commission for its discussion.
2. The neglect of article 2 may be related to the differences between remedies available in countries called 'developed democracies' and those falling outside this category. In a developed democracy, once ratification of a convention takes place its implementation can be ensured through the existing mechanisms of law enforcement. However, this is not the case in countries where the law enforcement mechanism itself is defective.
3. Most law enforcement mechanisms in Asia impede the implementation of effective remedies under article 2 of the ICCPR. In many countries criminal investigation systems are so fundamentally flawed that there are constant public complaints and the absence of faith in these institutions, such as in Pakistan, Nepal, Bangladesh, Cambodia and Indonesia. Sri Lanka is an extreme example of a totally collapsed system. Malaysia and Singapore are examples of countries that deny remedies by operation of "internal security acts" In Myanmar criminal investigations and prosecutions are totally controlled by the military regime. Even India, which in the past had a developed law enforcement system, has suffered greatly due to the operation of various anti-terrorism and internal security laws.
4. In ensuring effective remedies for violations of rights and thus the proper implementation of article 2, the prosecutor's function is very important. The absence of an independent prosecuting agency is a feature in several Asian countries. In China, Vietnam and Laos, despite many attempts to carry out legal reforms, the role of the independent prosecutor has not yet been recognized. In countries such as Pakistan, Nepal, Bangladesh, Cambodia and Sri Lanka, the independence of the prosecutor has been greatly undermined by higher political authorities. Concerning political issues, the prosecution systems in Malaysia and Singapore are also defective.
5. While there are many rhetorical condemnations of impunity, it is not often realised that without independent criminal investigation and prosecuting authorities it is not possible to overcome impunity. Impunity can safeguard itself through defective mechanisms even when there are laws against it. Typically what occurs is that after a violation takes place the criminal investigation authorities either do not pursue the matter at all, or do so unsatisfactorily. The prosecutor then claims that there is little or no evidence to act against the perpetrators. Even if under pressure the prosecutor takes the case to court, with insufficient evidence the perpetrators are released. In some instances the perpetrators then claim that their own human rights have been violated. Thus the absence of adequate criminal investigation and prosecution mechanisms creates a vicious circle in which the work of human rights organisations is defeated by the very legal mechanisms upon which they rely.
6. In recent times many Asian governments—under heavy pressure from the international community—have appointed governmental commissions or committees to look into violations of human rights. These are mostly bodies performing mere public relations exercises. Without addressing the basic defects of the criminal investigations and prosecutions mechanisms the work of these agencies does not produce any positive results in ensuring the implementation of article 2. Unfortunately the same observation is valid regarding most national human rights institutions in Asia.

7. Accordingly, the Asian Legal Resource Centre urges the international community to pay greater attention to problems relating to the implementation of article 2 of the ICCPR. It should facilitate studies and develop recommendations on this issue. Special financial and non-material support must be provided to countries to reform and develop their criminal investigation and prosecution mechanisms, to ensure proper implementation of article 2. The Asian Legal Resource Centre also urges all UN human rights mechanisms to pay special attention to article 2, particularly by ensuring proper criminal investigations and prosecutions. Those of particular relevance are the Special Rapporteur of the Commission on Human Rights on the question of torture, Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers and the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences. This issue is also very relevant to all groups working on economic, social and cultural rights, and the Independent expert of the Commission on Human Rights on the right to development. Finally, we urge all civil society organisations, international human rights groups and bodies involved in the promotion and protection of human rights to take special note of issues relating to the implementation of the article 2. Without it, much of the work they do will produce little or no result in altering the patterns of human rights violations, particularly in countries not falling within the category of developed democracies.
